IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5775 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMT.DAXABEN KUBERBHAI PANDYA

Versus

P V PATEL

Appearance:

1. Special Civil Application No. 5775 of 1987
MS.ARCHANA AMIN for MR KG VAKHARIA for the Petitioner
NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 19/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. The petitioner challenges the constitutionality of Schedule-I of the Gujarat Panchayat Service (Recruitment of Primary Teachers), Rules, 1970, on the ground that the qualifications for eligibility for appointment of a candidate as Primary Teacher laid down therein are violative of fundamental rights of the petitioner guaranteed by Articles 14, 16 and 19 of the Constitution.

#. According to the petitioner, she had passed Secondary School Certificate Examination of the Maharashtra Secondary School Certificate Board with Gujarati as medium of instruction in June, 1982. Thereafter, she successfully completed Diploma in Education from a college aided by the Maharashtra Government. She shifted from Maharashtra to Gujarat in 1985 and pursuant to an advertisement dated 3rd October, 1986, by which applications were invited for the post of Primary Teachers by the District Primary Education Committee, Bhavnagar, she applied for the same. According to her, she was called for interview on 12.12.86 and she was placed in the select list. There is nothing placed on record to show that she was selected. The petitioner was informed by letter dated 18th September, 1987 (copy at Annexure:A to the petition) that she was not qualified for appointment as Primary Teacher as per the Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970, because, she was not holding Secondary School Certificate of the Gujarat Secondary School Examination Board.

#. It was contended on behalf of the petitioner that in the advertisement which was issued as per Annexure:B to the petition, the educational qualification required was S.S.C. and it was not mentioned that S.S.C. should be of the Gujarat Board. It was submitted that the petitioner had passed Secondary School Certificate Examination through Gujarati medium from the Maharashtra Board and there was no valid reason to discriminate against the petitioner vis-a-vis those who had passed their S.S.C. examination from the Gujarat Board. The provisions of the Rules requiring the eligibility qualification of Secondary School Examination Certificate of the Gujarat Board were, therefore, violative of Articles 14 and 16 of the Constitution.

#. The Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 were framed in the exercise of the powers conferred by Section 323 of the Gujarat Panchayats

Act, 1961. Rule-4 of the said Rules laid down eligibility criteria for appointment to the said post and under clause (b) thereof, it was prescribed that, to be eligible for appointment, a candidate must have passed any one or more of the qualifying examinations specified in Schedule-I annexed to the Rules. Schedule-I prescribed qualifying examination as defined by Rule 2 (iv) of the Rules as per which Secondary School Certificate Examination of the Gujarat Secondary School Certificate Board together with certificate of Primary Teachers Certificate Examination was, inter alia, prescribed as the qualifying examination for candidature for appointment as a Primary Teacher.

#. The powers of the Panchayats in the sphere of education include power of establishment and maintenance of primary schools as per the Schedules-I and II read with sections 88 and 117 respectively of the Gujarat Paychayats Act, 1961. When Primary Teachers are to be recruited at the level of local self-government of the nature of a Panchayat, the requirement of educational qualifications of Secondary School Certificate Examination conducted by the Gujarat Secondary School Certificate Board cannot be said to be any arbitrary or irrational criterion laid down for the purpose of recruitment to the post of Primary Teacher at such local level. The requirement of the educational qualifications of a particular university or board cannot per se be said to be arbitrary. The candidates who have passed the qualifying examination prescribed in the Schedule form a distinct class from the candidates of other States who may have passed similar examinations of the respective Boards of those States. To throw open such local recruitment of primary teachers to the candidates who have passed examinations from various Boards throughout India would not only be not feasible but it might put the candidates who have qualified through the Gujarat Board to a great disadvantage in the matter of getting appointments to the post at such local level. The Supreme Court in the context of admission to educational institutions held, in Gujarat University Vs. Rajiv Gopinath Bhatt, reported in 1996 SC 2066, that, if a rule has been framed that out of the merit list prepared, preference is to be given, for admission to super speciality courses, to the students of a University in question, it cannot, per se, be held to be arbitrary or unreasonable or violative of Article 14 of the Constitution. The Supreme Court observed in para-5 of the judgment that from time to time, the Supreme Court taking into consideration the local and regional compulsions has been making efforts to strike a balance

so that the students who have studied in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when a question of their admission to super speciality courses arise in which seats are limited in number. The Supreme Court quoted with approval the observations made in Anant Madaan Vs.State of Haryana, reported in (1995) 2 SCC 135, in para-13 of the judgment, that the eligibility condition which required that the candidate should have studied 10th, 10+1 and 10+2 classes from a recognized institution in the State of Haryana was neither arbitrary nor unreasonable.

#. Having regard to the fact that the recruitment was to the post of primary teacher at a local Panchayat level, in our opinion, the requirement that the candidates who possessed certificate of Gujarat Secondary Certificate Board cannot be said to be arbitrary or discriminatory. There is, absolutely no reliable material produced on record to show that the petitioner was, in fact, selected by the Board. In view of the eligibility qualifications laid down in the Schedule, read with Rule 4 of the said Rules and in view of the communication addressed to the petitioner as per Annexure:A in which the petitioner was in clear terms told that she was not eligible for appointment as Primary Teacher, it is evident that the petitioner was not selected for appointment to that post and since she was not qualified, she had no right to be considered for appointment to the said post under the Rules.

#. The challenge against the provisions of the Schedule-I to the Rules as well as the challenge against the communication dated 18.9.87 at Annexure:A to the petition, therefore, fails. The petition is accordingly rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]

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